IN THE HIGH COURT OF BOMBAY AT GOA

P.I.L WRIT PETITION NO.142/2000

John F. Gonsalves,
Convenor, Citizens Ward Committee,
Ward No.1, Dando,
Caranzalem, Goa. .... Petitioner.

V/s.

1. State of Goa, through Chief Secretary, Panaji, Goa.

2. Chief Officer, Panaji Municipal Council, Panaji, Goa.

3. Deputy Collector, North Goa, Revenue.

4. Indian Oil Corporation Ltd., Vasco-da-Gama, Goa. .... Respondents.

Mr. Nitin Sardessai, Amicus Curiae.

Mr. A.N.S. Nadkarni, Advocate General with Ms. Winnie Coutinho, Govt. Advocate for respondents No.1 & 3.

Mr. A.F. Diniz, Advocate for respondent No.2.

Mr. M.S. Usgaonkar, Sr. Advocate with Mr. G.G. Kamat & Mr. Sanjay Sardessai, Advocates for respondent No.4.

CORAM : S. RADHAKRISHNAN &
P.V. HARDAS, JJ.

DATE : AUGUST 20, 2002.

ORAL JUDGMENT : (Per **RADHAKRISHNAN, J.**)

By this petition, the petitioner who claims to be the convenor of Citizens Ward Committee, Ward No.1, Dando Caranzalem, has challenged the permission granted to respondent No.4, Indian Oil Corporation Ltd., to set up a petrol pump in Bazarwaddo, Caranzalem. The main

grievance of the petitioner is that the area where the petrol pump is set up, is a dense residential area and also that the land which has been acquired, was acquired for a recreational park and, as such, setting up of such a petrol pump by respondent No.4 on the said plot would be contrary to the provisions of the Goa Town and Country Planning Act and the Rules and the Planning and Development Authority (Development Plan) Regulations, 1989, hereinafter referred to as "Regulations"

2. When the petition was entertained by this Court, a grievance was made by the petitioner that this allotment appears to have been made surreptitiously, without any proper request, etc. However, the learned Counsel, Mr. Nitin Sardessai, appearing as amicus curiae in this matter, on behalf of the petitioner, submitted that subsequent thereto, the learned Advocate General had shown all the relevant correspondence with regard to the aforesaid allotment and construction. In view thereof, the learned Counsel Mr. Sardessai fairly stated that the petitioner had no grievance that the allotment has been made surreptitiously. In fact, from the record, it is clear that the Indian Oil Corporation, respondent No.4 had written a letter as far back as on 24.7.1996 to the Director of Land Survey for grant of land to set up a retail outlet at Dona

Paula. In fact, the said letter also refers to the meeting wherein the Chief Minister had also indicated the necessity of setting up of a petrol pump in that area, as the same was an essential need of the local population in that area. There has been an extensive exchange of correspondence between the Director of Civil Supply, Director of Land Survey as well as the Indian Oil Corporation and finally, the plot concerned was allotted to respondent No.4 to set up the petrol pump.

3. Learned Counsel for the petitioner, however, submitted that by Award dated 17.2.1987, the State of Goa had acquired a large tract of land admeasuring 2,21,113 sq. metres for the purpose of recreational park and, as such, the respondent/State of Goa ought not to have permitted erection of a petrol pump and that too in a dense residential area, which would be totally contrary to the provisions of The Goa Town and Country Planning Act as well as the Regulations framed thereunder. Mr. Sardessai, learned Counsel pointed out various provisions of the Goa Town and Country Planning Act, especially Sections 9, 18, 29, 39 and 42 of the said Act. The contention of learned Counsel for the petitioner is that once a plot is reserved for recreational park and the same was acquired for the said purpose under the said Award, the

respondent/State could not have unilaterally changed the said purpose and allowed erection of a petrol pump.

4.Learned Counsel for the petitioner has also stated that at the time when the petition was admitted, there were certain other issues which were raised, namely that the construction of the petrol pump on the said site was without obtaining requisite permission under Section 32 of the Land Revenue Code. Leaned Counsel for the petitioner, fairly conceded that this objection would not survive inasmuch as the Lessee is a Government Company and, as such, there is no necessity to obtain permission under Section 32 of the Land Revenue Code. Similarly, even on the issue of shifting of high tension electrical lines, learned Counsel for the petitioner conceded that perusal of the relevant records, as shown by learned Advocate General, showed that the said shifting of the high tension electrical lines had also taken place with due permission and also as a precautionary measure inasmuch as the erection of a petrol pump in a close proximity of high tension electrical lines would be highly hazardous since the petroleum product is highly inflammable. Therefore, the only ground of objection of the petitioner is that as the land which was acquired under the aforesaid Award dated 17.2.1987, was meant for recreational park, the respondent/State ought not to have permitted

erection of a petrol pump by respondent No.4 in such an area.

5. Learned Advocate General, at the outset, pointed out in the Award dated 17.2.1987 it is clearly mentioned that the aforesaid huge tract of land admeasuring 2,21,113 sq. metres was acquired for the purpose of recreational park and other development of the area in Panaji City, Tiswadi Taluka. The said Award again reiterates that even the Notification which was issued under Section 6 of the Land Acquisition Act, clearly mentions that the land was being acquired for public purpose at Miramar for parks, recreational and other development of the area. Therefore, the contention of learned Advocate General is that the entire area of 2,21,113 sq. metres was not acquired only for the purpose of setting up recreational garden, but also for other development purpose. In that behalf, learned Advocate General has referred to and relied on an affidavit of the Chief Town Planner, Town and Country Planning Department, Government of Goa dated 19.8.2002, wherein it is clearly mentioned that a substantial portion of the land i.e. an area of 78,000 sq. metres was used for construction of a road from Gasper Dias Circle to NIWS junction. It also mentions that 4000 sq. metres of land was used for construction of a road near Science Museum and another 3600 sq.

metres was used for construction of road from Blue Bay junction to Taleigao Syndicate Bank. The said affidavit further indicates that an area of 9000 sq. metres approximately has been used for construction of Science Museum cum Centre. Apart from the above, the State Government has also transferred 76,461 sq. metres of land to the North Goa Planning and Development Authority (NGPDA) for development purpose. In addition thereto, 1,562 sq. metres of land has been allotted to Telecom Department for setting up Telephone Exchange at Caranzalem. The plot, in question, wherein the petrol pump has been erected, admeasures 960 sq. metres. In addition thereto, an area of 562 sq. metres is identified as a park. However, there has been some dispute with regard to the said land and, as such, there is no further activity on the said land. In addition thereto, there is a land admeasuring 15,367 sq. metres approved for a park outside Raj Bhavan, out of which 7,684 sq. metres of land was transferred to NGPDA. Over and above, it appears that for recreational purpose, the Government has proposed to set up a Water Sports Complex in land admeasuring 22,934 sq. metres which is out of the land allotted to the NGPDA, thereby leaving a balance of 39,285 sq. metres which it appears is mostly situated towards the river side, falling under the Coastal Regulation Zone area, and as such, there could be no construction, as

the said land falls under No Development Zone.

6. Shri Nadkarni, the learned Advocate General brought to our notice that as per Regulation 26 of the Planning and Development Authority (Development Plan) Regulations, 1989, in a residential zone, setting up of a petrol pump is not prohibited. As per Regulation 26. 1.1. various activities have been prohibited in a residential zone. However, there is no mention of erection of petrol pump being prohibited in a residential zone. In fact, Regulation 26.1.2. specifically provides that all other uses other than what uses have been prohibited, are permitted. Mr. Nadkarni, the learned Advocate General has submitted that there is no specific bar on erection of a petrol pump in the said area. Apart from that, learned Advocate General also showed us, the Outline Development Plan, which clearly indicates that the said plot is falling under the residential zone and in view of the aforesaid provision in Regulation 26, erection of a petrol pump is not prohibited at all.

7. Learned Advocate General also brought to our notice a Judgment of the Hon'ble Supreme Court in **Bhagat Singh v. State of U.P. and others,** (1999) 2 SCCs 384 wherein he laid stress on para 22 of the said Judgment, which reads as under :

> "22. As pointed out in the above judgments, there is no need that the land proposed to be acquired by the Government for a particular public purpose should be for the same purpose or use mentioned in the Master Plan or Zonal Plan for the said area. Nor will the acquisition be invalid merely because the land proposed to be acquired is for a purpose other than the one permitted by the Master Plan or Zonal Plan applicable to that locality. Acquisition will be valid if it is for a public purpose even if it is not for the type of user permitted by the Master Plan or Zonal Plan in force at the time the acquisition is made. It will be for the beneficiary of the acquisition to move the competent authority under the Development Act and obtain the sanction of the said authority for suitable modification of the Master Plan so as to permit the use of the land for the public purpose for which the land is acquired. In fact, it may be difficult for the beneficiary of the acquisition to move the competent authority under the Development Act seeking permission to change of land use even before the land is acquired or before possession is given to the beneficiary. On the principle stated in **Aflatoon case** it is clear that acquisition for public purpose and obtaining permission from the competent authority under the Development Act concerned for change of land use are different from one another and the former is not dependent upon the latter."

From the above, it is clear that the land proposed to be acquired by the Government for a particular purpose can always be used for some other public purpose, provided such a user is permitted in the Master Plan or Zonal Plan. In the instant case, Outline Development Plan clearly indicates that the land wherein the petrol pump is erected is in the settlement area and in such an area there is no bar at all for erecting or

constructing a petrol pump as per Regulation 26. Even the aforesaid Judgment of the Hon'ble Supreme Court clearly indicates that the State is always entitled to use the land acquired for some other public purpose. In any event, in the instant case, the land is also acquired for development purpose in addition to recreational purpose.

8. In the aforesaid facts and circumstances and having considered all the material on record, we find that erection of the petrol pump in a settlement area, as indicated in the Outline Development Plan, is not at all prohibited as per Planning and Development Authority (Development Plan) Regulations, 1989, especially Regulation 26 which does not prohibit such a user at all. Apart from the above, the land which was acquired, was not only acquired for the purpose of recreational park, but also for development purpose. Obviously, State would not acquire such a huge tract of land admeasuring 2,21,113 sq. metres only for the purpose of recreational park and that too in a close proximity of seashore and the open area. The entire area is full of residential buildings. Apart from the above, the learned Advocate General has also pointed out that the nearest petrol pump for the persons who are residing in the vicinity of Raj Bhavan or even for the residents in the vicinity of Goa University, is

almost about 10 to 12 kms. In fact, setting up of a petrol pump at the site wherein respondent No.4 has erected the petrol pump would obviate the difficulties of the local citizens in that area. In fact, lot of fuel could be saved inasmuch as residents surrounding the Goa University, as well as Raj Bhavan and Dona Paula areas who have to travel almost 10 to 12 kms. every time when they need to fill up their vehicles with fuel. In fact, this petrol pump, learned Advocate General states, would save fuel for the Country and would subserve the larger national interest. Thus, setting up of a petrol pump at the site was very much a necessity in the larger public interest also. We are in agreement with the learned Advocate General that the erection of the petrol pump at the site is not in violation of Regulation 26 of the aforesaid Regulations and also in view of the fact the land is acquired not only for recreational park, but also for other development activities and to set up a petrol pump is an essential need of the residents in the locality of Goa University, Raj Bhavan and Dona Paula areas as they have to travel 10 to 12 kms. every time to get fuel for their vehicles. Over and above, as rightly pointed out by learned Advocate General, setting up of a petrol pump on the site, would subserve the public need and would also save a lot of fuel.

9. Under the aforesaid facts and circumstances, we do not find any merit in the petition, hence Rule stands discharged, however, with no order as to costs and the interim stay granted on 3.7.2000 stands vacated.

S. RADHAKRISHNAN, J

P.V. HARDAS, J.

ssm.